



MICHAEL BARNETT
Attorney At Law

345 Park Avenue
New York, NY 10154

Direct 212.407.4163
Main 212.407.4000
Fax 212.656.1554
mbarnett@loeb.com

Via ECF
Via Messenger

May 8, 2014

The Hon. Laura Taylor Swain
United States District Judge
United States District Court
500 Pearl Street
New York, NY 10007

Re: *Universitas Education, LLC v. Nova Group, Inc.*, Case No. 11-1590-LTS (S.D.N.Y.)
Opposition to Motion to Strike

Dear Judge Swain:

We represent Petitioner/Judgment Creditor Universitas Education, LLC ("Universitas") in the above-captioned action. We write in opposition to Gerard Williams Jr.'s Motion to Strike (Dkt. No. 429), and also to explain what may have only been implicit in Universitas's letter-motion seeking leave to file a sur-reply and its proposed sur-reply.

Universitas's proposed sur-reply makes four brief points, and each point responds to an argument that Mr. Williams made for the first time in his reply brief.

- **Point 1.** Mr. Williams misstates the issue to be decided by the Court (see Dkt. No. 423 at p. 1). In our proposed sur-reply, we state what we respectfully submit are the key issues raised by Mr. Williams's motion.
- **Point 2.** Mr. Williams's statement in his reply brief that he owns the Policy (see Dkt. No. 423 at p. 2) contradicts his prior statement in his Motion that the Trust holds title to the Policy (see Dkt. No. 413 at p. 3). Our proposed sur-reply aims to resolve this confusion and explains why GM Trust owns the Policy.
- **Point 3.** Universitas was the first to mention Section 6.07 of the GM Trust instrument, in its opposition brief. In his reply brief, Mr. Williams made an argument with respect to Section 6.07 that we assert is erroneous (see Dkt. No. 423 at pp. 7-8). As Mr. Williams failed to mention Section 6.07 in his moving papers (despite our mentioning this provision to him before he filed his motion), the first time we would be able to respond to his view on Section 6.07 is in a sur-reply.
- **Point 4.** Mr. Williams raised judicial estoppel for the first time in his reply brief (see Dkt. No. 423 at pp. 8-9). Our sur-reply responds to this argument.



The Hon. Laura Taylor Swain
May 8, 2014
Page 2

We disagree with Mr. Williams's allegation of "gamesmanship." The proposed sur-reply was itself the best argument for obtaining leave to file a sur-reply, as it succinctly explained (albeit implicitly) what new points in Mr. Williams's reply brief Universitas wished to rebut. Universitas followed this exact procedure in seeking leave to submit a prior sur-reply brief (see Dkt. No. 355), and the Court granted such leave (Dkt. No. 359). We recognize, however, that our letter accompanying the proposed sur-reply should have had more explanation, and we provide that explanation in this letter. We regret any inconvenience we may have caused the Court or Mr. Williams.

We respectfully request that the Court deny Mr. Williams's motion to strike and accept Universitas's proposed sur-reply.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "MB" followed by a stylized surname.

Michael Barnett
Loeb & Loeb LLP

cc: Michael Bloom (attorney for Mr. Williams) (via ECF)
Glenn Duhl (attorney for Grist Mill Trust Welfare Benefit Plan) (via ECF)